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DECISION

James Franco
Pres. I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-187495**DATE: March 22, 1977****MATTER OF: Commercial Industrial Development Corp.****DIGEST:**

Contract may be reformed to include amount requested by low offeror to cover real estate taxes allegedly omitted from offer to construct building for lease of office space to Government since record shows contracting officer had constructive notice of error when (1) offeror failed to include applicable real estate taxes in his Form 1217 (Lessor's Annual Cost Statement); (2) there was wide disparity between low offer and other prices received; and (3) low offeror was not requested to verify price.

Pursuant to an error in its offer alleged after award, the Commercial Industrial Development Corp. (CIDCO) requests reformation of the contract awarded in under request for proposals (RFP) No. 925-09B-73622 issued by the General Services Administration (GSA) San Francisco regional office.

The RFP solicited offers for lease to the Government of 15,653 net usable square feet of space in a building to be constructed (by the offeror) at Flagstaff, Arizona, on land made available by the city of Flagstaff under a prior agreement. The solicitation, issued to nine interested parties on October 11, 1973, resulted in four responses. The four offers received were, respectively:

<u>Offeror</u>	<u>Yearly Rent</u>	<u>Price Per Sq. Ft.</u>
1 (CIDCO)	\$73,256.04	\$4.68
2	\$92,509.23	\$5.91
3	\$96,831.25	\$6.19
4	\$98,444.50	\$6.29

Award was made to CIDCO on April 8, 1974. On June 7, 1974, GSA was advised by CIDCO that the cost of real estate taxes had been erroneously omitted from its price. To correct the error, CIDCO requested that the

B-187495

price it offered for the lease construction contract be increased by an additional \$9,500 per year to defray the estimated cost of the taxes for the term of the lease (a maximum of 20 years). GSA requested our decision on the matter by letter dated September 22, 1976.

The record indicates that the error resulted from CIDCO's belief that real estate taxes were not applicable to the property because the building was to be constructed on and owned by the city. CIDCO's erroneous belief was allegedly derived from conversations with the Flagstaff City Attorney. This matter was clarified by the Flagstaff City Attorney in correspondence sent on April 23, 1974. By letter dated June 10, 1974, formal notice was received from the county tax assessor confirming that CIDCO would be taxed as the owner of improvements on the property. CIDCO determined that the taxes under its offer would have been \$9,500 annually.

In support of the claim, CIDCO furnished the aforementioned letters and a copy of the Lessor's Annual Cost Statement, Form 1217 (1217), submitted with its offer. CIDCO noted that the 1217 form did not contain an entry in the place designated for the entry of applicable real estate taxes. However, the 1217's submitted by the other offerors had entries for such taxes, respectively, of \$8,400.00, \$9,560.55, and \$10,000.00.

Offerors were requested to construct a building which would result in 15,653 square feet (plus or minus 10 percent) of usable contiguous general office space available for lease to the Government. Offerors were advised that award would be made on the basis of the lowest offer received which was most advantageous to the Government. There was no Government cost estimate and CIDCO was not requested to verify its low bid. The contracting officer determined that the lack of an entry for taxes along with the disparity between CIDCO's offer (\$4.68/sq. ft.) and that of the next low offeror (\$5.91/sq. ft.) was clear and convincing evidence of a mistake which should have charged him with constructive notice of the possibility of a mistake. The contracting officer noted that if the lease were reformed to allow the \$9,500 per year increase CIDCO requested for taxes, its per annum rental of \$82,756.06 (\$73,256.04 plus \$9,500) would still be substantially lower than the other offers. It was also noted that the requested increase would not result in CIDCO's total rental price being in excess of the limitations imposed upon such rentals by section 322 of the Economy Act of 1932 (40 U.S.C. § 278a (1970)). Therefore, the contracting officer recommends that the reformation be allowed in the amount requested.

E-187495

When a unilateral mistake in an offer is not discovered until after award, our Office will not grant relief, either by reformation or rescission/cancellation, unless the contracting officer knew or had reason to know of the mistake prior to award. A contracting officer will generally be charged with constructive notice of a possible mistake when, as in this case, the price offered deviates significantly from the other offers received or a Government estimate.

Accordingly, we find that CIDCO's contract may be reformed to reflect an annual increase in contract price of \$9,500 as requested.

Pykeman
Deputy Comptroller General
of the United States